

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
JUDGE BATTS

-----X
BORIS ASHMAN,
(A71 068 181),

Petitioner,

07 CIV 9414
COMPLAINT

-against-

DEPARTMENT OF HOMELAND SECURITY,
THE UNITED STATES CITIZENSHIP & IMMIGRANT
SERVICES, and the FEDERAL BUREAU of
INVESTIGATION,

Respondents.



-----X

PETITION FOR MANDAMUS

To the Honorable Judges of the United States District Court, Southern District of New York:

Petitioner BORIS ASHMAN, (A71 068 181), herein petitions this Court through this mandamus action to direct the Department of Homeland Security to finalize his petition for citizenship forthwith.

JURISDICTION

1. 8 U.S.C. § 1447(b) allows applicants to seek review in the District Courts of the failure of the United States Citizenship and Immigration Service to act within 120 days of the naturalization interview. INA §336(b); Also see 8 C.F.R. §§ 310.5, 336.9.
2. In addition, the Administrative Procedure Act requires that administrative agencies have a duty to decide issues presented to them within a reasonable time. 5 U.S.C. §555(b).
3. 28 U.S.C. §1331 confers jurisdiction on District Courts to review actions of federal agencies. 28 U.S.C. §1331 note 48. Indeed, reviewing courts have a duty to compel agency action unreasonably delayed. Neder v. F.C.C., 50 F.2d 182, 172 U.S. App. D.C. 1 (C.A.D.C. 1975).

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4. Furthermore, 28 U.S.C. §1361 provides that “district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.”
5. Under Rule 81 of the Federal Rules of Civil Procedure, writs of mandamus are abolished: “Relief heretofore available by mandamus ... may be obtained by appropriate action or by appropriate action or by appropriate motion under the practice prescribed in these rules”.
6. Section 279 of the Immigration and Nationality Act, 8 U.S.C. § 1329 confers jurisdiction upon United States District Courts for review of all cases arising under the Immigration and Nationality Act, and the Administrative Procedures Act provides for judicial review of federal administrative agencies, authorizing the court to compel agency action unlawfully withheld or unreasonably denied.
7. Jurisdiction also lies under the United States Constitution because a benefit has been conferred to the Petitioners and the executive arm of the government is required to assure that the laws are discharged and complied with.

STATEMENT OF FACTS

8. Petitioner BORIS ASHMAN (A71 068 181), a permanent resident, applied for US citizenship on February 17, 2004.
9. On January 21, 2005 petitioner was interviewed by Officer J. Nastasi. See Exhibit “A”.
10. Because the USCIS has failed to make a determination under § 335 of the INA within 120 days after the examination was conducted pursuant to §335 of the INA, as a consequence, the District Court where the applicant resides has the ability to act on the case.

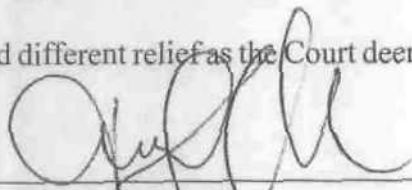
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11. The case is allegedly pending waiting the determination of background checks. Petitioner has repeatedly sought to have the case finalized. See Exhibit "B".
 12. Notwithstanding all efforts of self-help by the petitioner, the case remains unfinalized because the FBI background check likewise remains unfinalized. See Exhibit "C".

RELIEF SOUGHT

13. Petitioner faces the possibility that his case will remain unadjudicated for substantial additional time because the USCIS failed and/or refuses to adjudicate the Petitioner's case.
14. The law permits the District Court to adjudicate cases in these circumstances, *to wit*, those cases pending greater than 120 days after the naturalization interview. This case has been pending for more than two and a half years following the interview.
15. The USCIS is statutorily mandated to adjudicate and finalize promptly naturalization applications. This procedure must be performed within 120 days which has not occurred.

WHISEFORE, Petitioner respectfully request through this Mandamus action that petitioner's naturalization case be finalized and that the oath taking ceremony be promptly scheduled or that the Court perform such ceremony, and other further and different relief as the Court deems appropriate.

Dated: October 17, 2007



Jennifer Oltarsh
Oltarsh & Associates, P. C.
494 Eighth Avenue, Suite 1704
New York NY 10001
(212) 944-9420

Applicant's Name: Boris Ashman

A#: 71 068 181

On 1/21/05, you were interviewed by INS Officer J. Nastasi

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the test of U.S. history and government and the English language requirement was waived.
- ☐ The Service has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to _____ speak / _____ read / _____ write English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☒ Please follow the instructions on the Form N-14.
- ☒ INS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your _____ English ability / _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this N-400. INS will send you a written decision about your application.
- ☐ Congratulations! Your application has been recommended for approval. At this time, it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.
- ☒ A decision cannot yet be made about your application.

It is very important that you:

Notify INS if you change your address.

Come to any scheduled interview.

Submit all requested documents.

Send any questions about this application in writing to the officer named above. Include your full name, A-number, and a copy of this paper.

Go to any oath ceremony that you are scheduled to attend.

Notify INS as soon as possible in writing if you cannot come to any scheduled interview or oath ceremony. Include a copy of this paper and a copy of the scheduling notice.

Congressional Unit

GIVE THIS YOUR IMMEDIATE ATTENTION!



File No: [REDACTED]
Date : 4/28/2006
Ctrl : 06-6391

In Re: **ASHMAN, BORIS**

Information requested by: **MALONEY, CAROLYN**
1651 THIRD AVENUE SUITE 311 NEW YORK, NY 10128

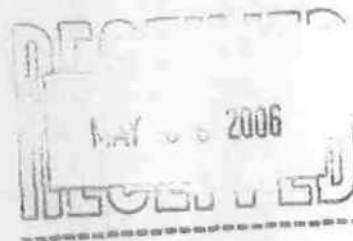
☐ Attorney ☐ Congressional ☐ Consulate ☐ Other

Inquiry: ☐ Telephone ☐ By Letter ☐ Appeared in person

To: **CON**

Information requested: **FOR REVIEW AND RESPONSE. DUE BY 5/28/2006**

STATUS OF N-400.



Information furnished:

PLEASE BE ADVISED THAT ACCORDING TO USCIS RECORDS, APPLICANT'S CASE IS CURRENTLY PENDING FURTHER REVIEW. APPLICANT WILL BE NOTIFIED BY MAIL OF ALL FURTHER ACTIONS.

[Signature] 4/28/06
(Signature of Officer or Employee)

Approved by: *[Signature]* 4/28/06
(Signature of Supervisor)

Location:

U.S. Citizenship
and Immigration
Services

HQCIS 181/48.2.1-C

JAN 24 2007

Mr. Boris A. Ashman
Apartment 2-A
20 Avenue A
New York, NY 10009

Dear Mr. Ashman:

Thank you for your letter dated December 8, 2006, to President George W. Bush. Your letter concerning the status of your Form N-400, Application for Naturalization was forwarded to the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) and assigned case #614251.

After careful review of the concerns expressed in your request, we have been in contact with the New York District Office regarding the status of your case. We have been advised that your fingerprints have been completed and we are pleased to inform you that your case #ESC*001168832, has resumed processing and is actively under consideration at this time.

We do understand the time sensitive nature of this matter and greatly appreciate your continued patience. Once your case has been thoroughly reviewed and the process completed, you will receive written notification with further instructions and/or any information necessary and your file will then be transferred to the adjudicating office, for further processing. Unfortunately, we are unable to provide you with an approximate date of completion at this time.

If, you have additional questions regarding this matter or require further assistance while your case is pending, please contact customer service at 1-800-375-5283. The service representative will help to determine what steps may need to be taken, if any, to best address your issue.

We trust this information is helpful and we apologize for not responding to your service request in a timely manner.

Sincerely,

Constance L. Carter, Supervisor
Customer Assistance Office
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security

WASHINGTON
January 3, 2007

Mr. Boris A. Ashman
Apartment 2A
20 Avenue A
New York, New York 10009

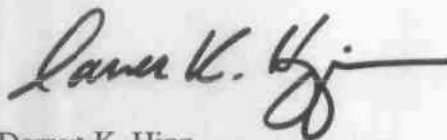
Dear Mr. Ashman:

On behalf of President Bush, thank you for your correspondence.

We are sending your inquiry to the Department of Homeland Security. This agency has the expertise to address your concerns. They will respond directly to you, as promptly as possible.

The President sends his best wishes.

Sincerely,

A handwritten signature in black ink, appearing to read "Darren K. Hipp", with a stylized flourish at the end.

Darren K. Hipp
Special Assistant to the President
and Director of Presidential Correspondence

Senator Martin Connor
25th District



THE SENATE
STATE OF NEW YORK

DISTRICT OFFICE
250 Broadway, Suite 201
New York, New York 10007-
(212) 298-5565
FAX: (212) 298-5574

ALBANY OFFICE
Room 408
Legislative Office Building
Albany, NY 12247
(518) 455-2625
FAX: (518) 426-6956

August 2, 2006

Hon. Charles Schumer
757 Third Avenue
Suite 17-02
New York, NY 10017

Dear Senator Schumer:

I am writing on behalf of Mr. Boris Ashman, of 20 Avenue A, Apartment 2A. In a recent telephone conversation, Mr. Ashman explained that he took the citizenship exam in January of 2005 and he is yet to receive the results. Enclosed you will find copies of vital documents and a letter describing in detail his situation. I respectfully request that you appoint the appropriate person to assist Mr. Ashman in the pursuit of his goal of becoming a United States citizen.

If you are in need of additional information or have any questions regarding the information provided in this letter please contact me, Oscar Jonas, Deputy Chief of Staff to Senator Martin Connor at (212) 298-5565.

Thank you for your assistance in this matter.

Sincerely,

Oscar Jonas
Office of Senator Connor

Enclosures

Senator Martin Connor
25th District



THE SENATE
STATE OF NEW YORK

DISTRICT OFFICE
250 Broadway, Suite 2011
New York, New York 10007-2
(212) 298-5565
FAX: (212) 298-5574

ALBANY OFFICE
Room 408
Legislative Office Building
Albany, NY 12247
(518) 455-2625
FAX: (518) 426-6956

August 3, 2006

Mr. Boris Ashman
20 Avenue A #2A
New York, NY 10009

Dear Mr. Ashman:

Enclosed, please find a copy of the letter sent on your behalf to the Office of United States Senator Charles Schumer. Copies of the documents that you provided to me were also forwarded to the Senator's office.

If you have any questions or are in need of further assistance, please feel free to contact me, Oscar Jonas, Deputy Chief of Staff to Senator Martin Connor at (212) 298-5565. I will contact you as soon as I receive a response.

Sincerely,

A handwritten signature in black ink that reads 'Oscar M. Jonas'.

Oscar Jonas
Office of Senator Connor

Enclosure



Congresswoman Carolyn B. Maloney

Constituent Information Form and Privacy Release

Name: Boris Ashman M ☒ F ☐ (check one)Street Address: 20 Avenue A, Apt 2ACity: New York State: NY Zip: 10009 - 7905Telephone: (work) (212) 4125419 (home) (212) 9,616,352.00 212-961-6352E-mail Address: Boris.Ashman@bareap.comList any and all identifying numbers that apply to your situation:
(Social Security #, VA #, Immigration "A" #, Case Number, etc.)SSN [REDACTED]

Briefly describe the nature of the assistance you are requesting (list any forms you have filed, as well as any names, dates or contact numbers you think may help the Congresswoman's inquiry. If you are writing on behalf of another individual, include his or her relationship to you, his or her contact information and, if possible, have them sign this form as well):

I applied for naturalization (N400, case A71068181) on 02/17/2004 and was interviewed for citizenship on 01/25/2005 by INS officer J.Nastasi. I passed the test, but officer requested a copy of marriage certificate, which I submitted to INS the same day. I was told that the decision will be taken on my case in no later than 4 months. After 14 months, the decision is still pending, without any reasons explained. I called INS offices and visited them in person multiple times, and all this time I am being told the same thing - my case is under review, no more information is available. For all I know, they could have lost my case or put it in a dumper.

Today, 04/07/06, I scheduled INFOPASS appointment to "speak with INS officer".

However, I was not allowed to meet my case officer - and was told instead, in rather abrupt fashion, familiar "case is under review, no more information is available", and my case officer is too busy to meet me. Even my request for INS receipt number (to check case status online) was refused. 14 months already passed without any movement on my case, while other people receive the decision within weeks. I am totally at loss, when try to determine how much more I should wait without doing anything. I have no way to inquiry as to what are the exact reasons for such huge delay, nor to meet INS case officer. Even though by law INS should have replied in 4 months, I have no power to request it. Could you help me to meet my case officer and find out what are exact reasons for such delays in my case? Could you help me to obtain decision on my case?

PLEASE READ AND SIGN BELOW:

I understand that the Privacy Act of 1974, 5 U.S.C. 552(a) *et seq.* prohibits any government agency from releasing information they may have in my name without my knowledge or permission. I hereby authorize Congresswoman Carolyn Maloney and members of her staff to obtain such information from government agencies as may be required for the purpose of investigating and resolving the concerns I have set forth herein.

Boris Ashman
Signature

04/07/2006
Date

Please return to: Congresswoman Carolyn B. Maloney, 1651 Third Avenue, Suite 311, New York, NY 10128
Fax Number: 212-860-0704

★ Before sending, please check that all necessary identification, contact numbers and signatures are included.

CAROLYN B. MALONEY
14th DISTRICT, NEW YORK
2331 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3214
(202) 225-7944

COMMITTEES:
FINANCIAL SERVICES
GOVERNMENT REFORM
JOINT ECONOMIC COMMITTEE

Case 1:07-cv-09414-DAB

Document 2

Filed 10/19/2007

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Congress of the United States
House of Representatives
Washington, DC 20515-3214

May 10, 2006

DISTRICT OFFICES:
1651 THIRD AVENUE
SUITE 311
NEW YORK, NY 10128
(212) 860-0606

☐ 28-11 ASTORIA BOULEVARD
ASTORIA, NY 11102
(718) 932-1804

WEBSITE: www.house.gov/maloney

Mr. Boris Ashman
20 Avenue A, Apt. # 2A
New York, NY 10009-7905

Dear Mr. Ashman:

I recently wrote to the United States Immigration and Citizenship Services on your behalf. Enclosed please find a copy of the response I received. I hope you find the information therein useful. Please note, your application is undergoing agency review, and you will be informed by mail as to any further actions.

If you have any questions, or if I can be of further assistance regarding this or any other matter, please do not hesitate to contact Victor Montesinos in my district office at (212) 860-0606.

Sincerely,

CAROLYN B. MALONEY
Member of Congress

CBM/mcl

Please Reply To:
1651 Third Avenue, Suite 311
New York, NY 10128-3679

Sign-up for periodic e-mail updates from Congresswoman Maloney at
<http://www.house.gov/maloney/email.html>



Name: Boris A Ashman

**Appointment Question about case
Type:**

Confirmation No.: NYC-06-35648

Authentication Code: 2cbe

**Appointment March 1, 2006
Date:**

Appointment Time: 12:30 PM

Location: 26 FEDERAL PLAZA, New York, NY 10278; Room 310

2th floor

Please be on time. Failure to show up on time will result in the cancellation of your appointment. You will then need to reschedule your appointment. You will not be admitted more than 15 minutes before your scheduled appointment time.

- **You must appear in person and bring photo identification along with this appointment letter.**
- **Acceptable forms of identification are any of the following: Government issued identification, passport, valid driver's license, I-94, Work Authorization Card, or Permanent Resident Card. (Green Card)**
- **In order to serve you more efficiently, we require you to bring all applicable immigration forms, letters, receipts, translations and originals of supporting documents.**

**This is your Confirmation
Number:**



*** N Y C - 0 6 - 3 5 6 4 8 ***

**If you wish to cancel this appointment, you will need the
following Personal Identification Number:
48885**

20 Avenue A, Apt 2A
New York, NY 10009
(212) 677-2283

December 8, 2006

President George Bush
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Re: Boris A Ashman
N-400 Application for Naturalization
A# [REDACTED]

Dear Honorable President:

I hesitated in sending this letter to you as I don't want to further burden you knowing that, as the chief executive of the United States of America, as well as the leader of the whole world, you are fully occupied with too many important matters.

I am writing to beseech your kind assistance in my application for naturalization which has been pending for exceptionally long. I have been a lawful permanent resident of the United States of America since 1999 and I filed my application for naturalization (form N-400) to become a US citizen on February 17, 2004. On January 25, 2005, I went to CIS office in New York and was interviewed by officer J Nastasi. I passed the test and submitted the requested documents. I was informed that I would receive a decision in no more than four months.

Nearly two years have passed, but I have received no decision. Being an American citizen means very much to me. It consummates my American dream. It reflects my strong passion and commitment to this land. It signifies that I am an American, not an alien. It's my pride. Certainly, it also has bearing on my family. My citizenship will help my wife receive legal immigration status. The exceptionally long waiting time has caused a hardship on my family emotionally and economically.

In the past two years, I have been trying very hard to contact CIS. I called a number of times and the last time I personally went to CIS was April 7, 2006. The result is always the same "The case is under review, no further information is available" I have

BORIS ASHMAN (A71 068 181),

Petitioner,

-against-

DEPARTMENT OF HOMELAND SECURITY and
THE UNITED STATES CITIZENSHIP &
IMMIGRATION SERVICES, and the FEDERAL
BUREAU of INVESTIGATION,

Respondents.

COMPLAINT

Jennifer Oltarsh

Attorney for the petitioner

Oltarsh & Associates, P.C.
494 Eighth Avenue, Suite 1704
New York, NY 10018
(212) 944-9420